



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a Pole License Agreement with Pacific Gas & Electric Company for gas meter communication (EUD)

MEETING DATE: October 17, 2007

PREPARED BY Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a Pole License Agreement between the City of Lodi (Lodi) and Pacific Gas & Electric Company (PG&E) allowing PG&E to install gas meter communication equipment on designated Electric Utility Department streetlight and utility poles.

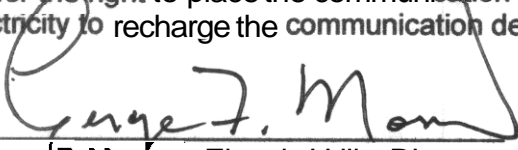
BACKGROUND INFORMATION: PG&E is seeking to install SmartMeter™ communication equipment on designated Electric Utility Department owned poles (initially seven locations). The devices are data collector units (DCUs) that will be used to remotely read customer gas meters here in Lodi and transmit the data to the PG&E central office for customer billing. The equipment will also allow PG&E to detect outages and leaks remotely and allow customers to view gas usage via the Internet.

PG&E will install 24 DCUs throughout the community, however, only seven of those DCUs will be installed/attached to City-owned poles. The seven locations that were identified by PG&E were reviewed/approved by EUD. For each PG&E gas meter in Lodi, three different DCUs will "read" the meter, to provide an overlap of reading capabilities. The DCUs are powered by a rechargeable battery, using 11 kWh of electricity per month for recharging.

The primary term of the agreement is five years, continuing thereafter year-to-year until terminated by either party with notice. PG&E will pay Lodi a fee of \$298.82 per pole (\$2,090.34 total for seven poles) in advance for pole usage and electricity for the initial 5-year period. The agreement has price escalators for any subsequent period. The fee consists of a Pole Attachment Fee of \$195.00 per pole (established by negotiations) and an Electricity Charge of \$103.62 per pole based on the applicable rate schedule.

FISCAL IMPACT: PG&E will pay Lodi a one-time lump sum amount of \$2,090.34 for the first five-year period under the agreement. This amount pays for the right to place the communication devices on seven poles throughout Lodi and the cost of electricity to recharge the communication devices.

FUNDING: Not applicable


George F. Morrow, Electric Utility Director

Prepared By: Ken Weisel, Manager, Electric Services and Rob Lechner, Manager, Customer Service & Programs
GFM/KAW/RSL/st
Attachment

APPROVED: 
Blair King, City Manager

AGREEMENT NO. _____

POLE LICENSE AGREEMENT

THIS POLE LICENSE AGREEMENT ("Agreement") is made and entered into on _____, 2007, by and between the **CITY OF LODI**, a municipal corporation, ("CITY" herein) and **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("PG&E" herein) each being referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CITY owns, operates and maintains certain street light and utility poles ("Poles" herein); and

WHEREAS, PG&E desires to enter into an Agreement for the attachment of communication equipment used for the operation and maintenance of PG&E's *SmartMeter* network, to CITY's existing Poles; and

WHEREAS, PG&E's *SmartMeter* equipment consists of telecommunications equipment including, but not limited to, a Data Collector Unit, two whip antennas, coaxial cable and photovoltaic adaptor ("*SmartMeter* Equipment"); and

WHEREAS, it is understood and agreed that this Agreement will permit the placement of the *SmartMeter* communication equipment on certain of CITY's Poles; and

WHEREAS, CITY is willing to grant PG&E a non-exclusive, revocable license for the attachment of the *SmartMeter* Equipment to CITY-owned Poles, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, incorporating the foregoing recitals herein, the Parties agree as follows:

1. EFFECTIVE TERM OF AGREEMENT. This Agreement shall be and remain in effect for an initial period of five (5) years from the effective date, which is the date of execution, and shall automatically extend thereafter for successive terms of one (1) year each, unless otherwise terminated by either party in accordance with Section 25, below.

2. POLE LICENSE. CITY does hereby confer on PG&E a non-exclusive, revocable license to attach, replace, operate, maintain, and use *SmartMeter* Equipment to certain support arms and Pole(s) owned by CITY, subject to CITY approval of the specific location(s) to be used. Permission to attach to CITY-owned Poles shall be memorialized in the form of the Pole Permit, attached to this Agreement as **Exhibit "A,"** and incorporated herein by reference. The initial locations for which a Pole Permit is requested are included in Exhibit "A", and are those specific locations that the Parties

hereby agree are covered by this Agreement as of the date the Pole Permit is executed. The location specified in the request for a Permit shall include the specific Pole(s) and the specific location(s) on each Pole for which PG&E seeks permission to attach. For utility poles, the location will be in or below the Communications Zone of the Pole. The equipment will be so located that photocells will not be shaded.

3. LICENSE FEES. In consideration for the rights granted herein, PG&E shall pay to CITY at one time for the initial five (5) year period, prior to installation, as follows for each Pole:

Pole Attachment Fee	\$195.00 per Pole
<u>Electricity Charge</u>	<u>\$103.62 per Pole</u>
Total License Fees	\$298.62 per Pole for the initial 5-year period, not an annual figure, paid in advance.

For each subsequent one (1) year term, the Pole Attachment Fee per Pole shall be 20% of the above Pole Attachment Fee per Pole, adjusted by a 4% per year escalator from the date of execution to the starting date of said term, and shall be paid in advance of the year for which such payment is made.

In addition, for each subsequent one (1) year term, the Electricity Charge per Pole shall be 20% of the above Electricity Charge per Pole adjusted by the ratio of CITY's annual average retail energy charge for the applicable service class on the starting date of said term to 15.7 cents per kWh, and shall be paid in advance of the year for which payment is made. Furthermore, for both the initial five-year term and for any subsequent term, the Electricity Charge per Pole shall be adjusted in proportion to the ratio of actual equipment energy usage per Pole to 11 kWh/month. Actual equipment energy usage per Pole shall be as specified by the manufacturer in documentation provided by PG&E to CITY or as otherwise determined by CITY.

4. REPLACEMENTS AND MODIFICATIONS. In the event that any installation requested by PG&E cannot be accommodated without Pole replacement or other equipment modification by the City of Lodi, PG&E shall be responsible to pay in advance the City of Lodi's reasonable cost to replace or modify such equipment, in addition to the License Fees provided for herein.

5. ADDITIONAL LOCATIONS. Prior to installing any *SmartMeter* Equipment on any additional CITY-owned Poles, other than the locations identified in Exhibit "A", PG&E will submit to CITY a revised Exhibit "A" seeking permission to install such additional *SmartMeter* Equipment on specified CITY-owned Poles. PG&E will pay additional License Fees (Pole Attachment Fee plus Electricity Charge) for each new approved Pole as set forth in Section 3 of this Agreement.

CITY will use reasonable efforts to respond, in writing, to each request submitted by PG&E within twenty (20) business days; provided that CITY is not required to approve, in whole or part, any such request, and CITY may delay or deny any such request at its sole option, without recourse by PG&E. PG&E shall pay CITY its reasonable cost to

determine the acceptability of meeting such request. CITY will not deny such a request unreasonably.

5.1 Each location approved by the CITY shall be memorialized in a Pole Permit in the form of Exhibit "A" to this Agreement, and shall be incorporated by reference herein at the time it is executed and delivered.

5.2 PG&E may, from time to time, request to replace, modify, update and/or reposition existing *SmartMeter* Equipment. PG&E shall pay CITY its reasonable cost to determine its physical acceptability with regard to factors including but not limited to Pole capability, interference with photocells, and interference with communications.

6. SAFETY PRECAUTIONS. PG&E shall perform all work on CITY-owned Poles in a workmanlike manner and in compliance with applicable federal, state, and local laws, rules and regulations, including, but not limited, to CITY's applicable standards.

7. RADIO FREQUENCY EMISSION REQUIREMENTS. PG&E will operate the *SmartMeter* Equipment in a manner that complies with the FCC's (or any more restrictive applicable standard subsequently adopted or promulgated by a governmental agency with jurisdiction) Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters in an inhabited area.

8. INTERFERENCE. If equipment installed by the CITY or PG&E, after the installation of equipment of the other party or a third party, causes electronic or physical interference with such previously installed equipment, the City and PG&E will take such steps as may be reasonable to eliminate such interference as soon as practicable.

9. REPAIR/MAINTENANCE OF CITY-OWNED POLES. For those Poles owned, operated, and maintained by CITY, CITY agrees that it will maintain such Poles in good working order during the effective term of the Agreement. If PG&E notifies CITY that *SmartMeter* Equipment is non-operational due to required maintenance on Poles, CITY will use its best commercially reasonable efforts to ensure that any necessary repairs are performed within ten (10) business days of PG&E's initial notification at no cost to PG&E other than the cost of removal and reinstallation of PG&E's equipment, if necessary or convenient for Pole repair or replacement, in the sole determination of CITY. If PG&E requests repair of Pole(s) within 72 hours of PG&E's initial notification, CITY will use its best commercially reasonable efforts to ensure that any necessary repairs are performed within the 72 hours at PG&E's sole cost. If CITY initiates repair or replacement of any Pole or Poles for its own purposes, CITY shall do so at CITY's cost, provided that PG&E shall be responsible at its own cost for removal and reinstallation of PG&E's equipment, if necessary or convenient for Pole repair or replacement, in the sole determination of CITY.

10. REMOVAL OF SMARTMETER EQUIPMENT. CITY will use its best commercially reasonable efforts to provide PG&E five (5) business days prior written notice of any non-emergency work that will, or may, affect the *SmartMeter* Equipment. Written notice may include e-mail or fax.

10.1 In the event that CITY is required by law or unavoidable circumstance to remove any *SmartMeter* Equipment attached to CITY-owned Poles on an emergency basis, CITY will use its best commercially reasonable efforts to notify PG&E of such circumstance as soon as practicable and will take all due care in removing and storing the *SmartMeter* Equipment.

10.2 PG&E will provide CITY written notice within ten (10) business days of removing or reinstalling any *SmartMeter* Equipment from any CITY-owned Poles specifying the *SmartMeter* Equipment removed or reinstalled and its location on CITY-owned Poles.

10.3 PG&E will, at its expense, remove all remaining *SmartMeter* Equipment from CITY-owned Poles within ninety (90) business days of the termination or expiration of this Agreement.

10.4 In the event that PG&E fails to remove any *SmartMeter* Equipment from the CITY-owned Poles within ninety (90) business days of the termination or expiration of this Agreement, CITY may, at PG&E's expense, remove such *SmartMeter* Equipment and CITY may either store such *SmartMeter* Equipment at PG&E's expense or CITY may consider PG&E's equipment abandoned and retain it for any use or, at PG&E's expense, dispose of it.

11. CITY USAGE. Subject to receiving such regulatory approvals as are required, in the event that City shall install *SmartMeters* or compatible equipment for its own system or systems and desires to use for its own purposes PG&E's communications equipment installed within or adjacent to the CITY boundaries, then PG&E shall cooperate with the CITY to determine the feasibility of providing such communication service to CITY.

12. INDEMNITY. PG&E shall indemnify, defend, and hold harmless CITY, its Elected and Appointed Boards, Commissions, officers, agents, employees, and volunteers against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by PG&E, PG&E's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for any such claims, damage or liabilities caused by CITY's active gross negligence or willful misconduct.

13. ASSIGNMENT. Neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of the parties, which shall not be unreasonably withheld.

14. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their administrators, representatives, successors and assigns.

15. **COMPLIANCE WITH ALL LAWS.** PG&E shall, at PG&E's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force. Provided however, that PG&E shall not be required to apply for a CITY encroachment permit for the *SmartMeter* Equipment authorized under this Agreement.

16. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

17. **EXHIBIT.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and the exhibit attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. The exhibit to which reference is made in this Agreement is deemed incorporated in this Agreement, whether or not actually attached.

18. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement, its interpretation and performance.

19. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

20. **INSURANCE.** PG&E shall maintain coverage at least as broad as the following insurance or self-insurance throughout the term of this Agreement.

20.1 Workers' Compensation and Employers' Liability: (1) Workers' Compensation insurance complying with any applicable labor codes, acts, laws or statutes, state or federal, where Contractor performs work. (2) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death per occurrence (BI/disease).

20.2 Comprehensive or Commercial General Liability coverage, Insurance Services Office (no less than Occurrence form CG 0001): (1) Coverage shall be for limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage, including Contractual Liability and Fire Legal Liability (\$100,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to this project/location.

20.3 Commercial (Business) Automobile Liability: Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile liability, code 1 "any auto." The limit shall not be less than \$3,000,000 each accident for bodily injury and property damage.

PG&E maintains a self-insurance program to cover exposures to General Liability and Automobile Liability. PG&E agrees to provide indemnification and defense to the City of Lodi, its elected officials, appointed boards and commissioners, officers, employees, volunteers, and agents as a result of any loss covered by this Agreement. PG&E also agrees that its self-insurance program will cover all losses and will not call upon any insured or self insured programs maintained by the City of Lodi until the limits of liability as required by Agreement are exhausted. The PG&E program will be primary coverage for any and all losses that arise resulting from this Agreement. Certification of Insurance Program letter shall be sent to:

City of Lodi
ATTN: Risk Management
221 W. Pine St.
Lodi, CA 95240

20.4 Certification of Insurance: By request, PG&E shall submit a letter of self-insurance signed by a duly authorized representative, evidencing that the self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this Agreement

21. MERGER AND MODIFICATION. All prior agreements related to this matter between the parties are incorporated in this Agreement which constitutes the entire agreement. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend this Agreement constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding involving this Agreement. This Agreement may be modified only in a writing signed by all the parties.

22. NEGATION OF PARTNERSHIP. Neither party shall become or be deemed a partner or joint venturer with the other party or associate in any such relationship with the other party by reason of the provisions of this Agreement. Neither party shall for any purpose be considered an agent, officer or employee of the other party.

23. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement. The acceptance of work or services, or payment for work or services, by CITY shall not constitute a waiver of any provisions of this Agreement.

24. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: CITY OF LODI
Attn: Electric Utility Director
1331 S. Ham Lane
Lodi, CA 95242

PG&E: PACIFIC GAS & ELECTRIC COMPANY
Attn: Land Department – Land Manager
245 Market Street, Mail Code N10A
San Francisco, CA 94105

25. TERMINATION. The parties hereto agree that either party may terminate this Agreement, as it relates to any individual location of the *SmartMeter* Equipment, upon one hundred eighty (180) days advance written notice to the other party. In the event that CITY terminates this Agreement as it relates to any individual location of the SmartMeter Equipment, CITY agrees to allow PG&E to find an alternate location for such SmartMeter equipment subject to approval per Section 5 of this Agreement. Either party may terminate this Agreement in its entirety, at any time during the term hereof by giving written notice to the other party, not less than twelve (12) months prior to the date when such termination shall become effective. Any termination of this Agreement shall not relieve PG&E of any obligations, whether of indemnity or otherwise, which has accrued prior to such termination or completion of removal of PG&E's equipment, whichever is later, or which arises out of an occurrence happening prior thereto.

25.1 Except as specifically set forth herein, CITY and PG&E agree that neither Party shall terminate this Agreement in the event of an alleged non-monetary breach nor default hereunder before the defaulting Party has been given notice of and a reasonable time and opportunity to respond to and cure any such non-monetary breach or default. For purposes of the foregoing, a reasonable time to cure any non-monetary breach or default shall be deemed to be thirty (30) days after notice, unless the nature of the default in question is such that while it is reasonably susceptible of being cured, it is not reasonably susceptible of being cured within such thirty (30) day period, in which case the curing thereof shall have commenced within such thirty (30) day period and shall hereafter be prosecuted to completion with reasonable diligence.

25.2 There shall be no refund for equipment removals of License Fees previously paid by PG&E.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

**PG & E
PACIFIC GAS AND ELECTRIC
COMPANY**



**Richard A. Gigliotti
Manager, Land Energy Delivery
Technical & Land Services**

**CITY
CITY OF LODI**

Blair King, City Manager

APPROVED AS TO FORM:

D. Stephen Schwabauer, City Attorney

ATTEST:

Randi Johl, City Clerk

Attachment: Exhibit "A" – Pole Permit

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RESOLUTION NO. 2007-204

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE A
POLE LICENSE AGREEMENT BETWEEN PACIFIC
GAS & ELECTRIC COMPANY AND THE CITY OF
LODI FOR GAS METER COMMUNICATION

WHEREAS, Pacific Gas & Electric Company (PG&E) desires to install gas meter data communications equipment on streetlight and utility poles owned by the Lodi Electric Utility; and

WHEREAS, PG&E and Lodi Electric Utility have reached agreement on terms and conditions for such installation.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Pole License Agreement; and

BE IT FURTHER RESOLVED that the Lodi City Council authorizes the City Manager to execute the Agreement on behalf of the City of Lodi and authorizes the Electric Utility Director or his designee to administer the Agreement.

Dated: October 17, 2007

I hereby certify that Resolution No. 2007-204 was passed and adopted by the Lodi City Council of the City of Lodi in a regular meeting held October 17, 2007, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Katzakian, Mounce,
and Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SANDY JOHL

City Clerk